REVIEWS.

A TREATISE ON THE LAW OF BAILMENTS. By James Schouler. Boston: Little, Brown, & Co. One volume. 2d edition, 1887. 8vo. pp. 795.

The second edition of Mr. Schouler's book on Bailments and Carriers is substantially the same as the first, but in the arrangement of the matter we are pleased to note a great improvement. The different chapters have been systematically subdivided by the introduction of sections and head-lines. Separate chapters have been devoted to the topics of Connecting Carriers and Transportation of Baggage. Though the substance of these chapters will be found in other parts of the old book, yet several new paragraphs, elucidating and expanding previous statements, have been inserted. The author now mentions four exceptions to the general rule that a common carrier is strictly liable in the absence of special contract, viz.: where the loss was caused (1) By act of God; (2) By public enemies; (3) By act of customer; and (4) By public authority.

Much of the former text, which at first sight appears to have been omitted, will be found in the foot-notes, which latter have also been increased by the insertion of the latest cases. A larger and better print helps to swell the size of the present edition. It may be added that the "Forms of Pleadings" have been dropped.

A separate paragraph has been devoted to the important subject of grain-elevators. The author carefully limits the instances where the deposits of grain in an elevator attached to a mill are in the nature of bailments to those cases where the agreement on the part of the warehouseman is to keep enough on hand to respond to all demands; a qualification which is overlooked in some of our Western cases. We think that this topic has been dismissed rather hastily, and regret, among other things, that no reference has been made to the important case of *South Australian Insurance Co.* v. *Randell*,[1] which contains an able exposition of the opposite and perhaps more strictly accurate view of the legal effect of these grain deposits.

Several useful additions are to be found in the chapter on Pledge and Pawn, which, however, lack of space prevents us from referring to at length.

With regard to the question whether a common carrier has a lien as against the true owner on goods which he has transported at the request of a thief, the author states the law as settled, that he has no such lien. While conceding that such should be the law, we are unable to assent to the proposition that it is the law, at least in England. The point has not been adjudicated of late in that country; but there are several recent dicta in which carriers and innkeepers are placed on the same footing in respect to their lien on converted goods, and it is not at all improbable that an English court would to-day be influenced by the mistaken analogy. The doctrine was first put forward in the Exeter Carrier Case.[2] There goods had been delivered to a carrier by a thief, and it was held that a lien existed on them "for the premium due on

[1] L. R. 3 P. C. Ap. 101.

[2] Cited by Holt, C. J., in York *v.* Grenaugh, 2 Ld. Raym. 866.

the carriage" against the right owner. In *Waugh* v. *Denham*,[1] Pigot, C.B., cites this case with approval, and states that it has never been overruled in England. The same judge remarks later on that "If a carrier knows that a thief gives him the goods of the true owner to carry, he cannot charge the owner for the service which he has knowingly rendered to the thief in the carrying of the goods," from which the natural implication is, that he could charge the owner if he did not know of the tortious bailment. See also Whitaker on Lien, p. 92; Browne on Carriers, p. 337; Cross on Lien, p. 28; Hutchinson on Carriers, § 489. It is thus seen that on the few occasions on which this question has been decided or adverted to in England, the carrier's right to a lien has always been upheld, and in view of this authority, meagre as it is, we must consider the author's statement as altogether too sweeping.

It is to be regretted that Mr. Schouler did not discuss at length the question as to the exact nature of a ticket, — whether it is a mere token, evidence of a contract, or the contract itself. The author seems to regard it as evidence of a contract; and while we are not prepared to differ with him, yet we are inclined to think that much can be said in favor of regarding the ticket as the contract proper,[2] — a promise on the part of the company, in consideration of the money paid, to carry the holder as indicated. In this view of the case it only ceases to be such on cancellation, when it becomes a token or voucher showing that the passenger has paid his fare. For a careful discussion of this question see Mr. Beale's article, HARVARD LAW REVIEW, vol. 1, p. 17.

In the last paragraph of his book the author points out that if in many cases he may appear to have avoided expressing an opinion or stating the law, this is due to the fact that the subject of Common Carriers, in its present phase, is one of such recent and rapid growth, that the courts themselves have not yet reached satisfactory or definite conclusions on many important points.

We think that the book, in its present shape, will warrant the careful study of any one interested in the subject of which it treats.

W. W.

THE LAW OF COVENANTS FOR TITLE. By William Henry Rawle, LL.D. Fifth edition. Boston: Little, Brown, & Co. 1887. 8vo. pp. 708.

It is now fourteen years since the last edition of this standard treatise was published. In that time the law on the subject has been much enlarged by decisions and modified by statutes both in England and the United States. It has been the aim of the learned author in this, the fifth edition, more to keep his book abreast of the times, than to change materially his views previously set forth. In order to do this it has been necessary to add much new matter. As an offset, some of that which has now become obsolete has been omitted, and still more of the old has been condensed, so that the size of the volume remains about the same.

Among the heads where the greatest change has been made are the form of covenants, covenants by married women, implied covenants,

[1] 16 Irish C. L., at 409, 1865.

[2] Henderson v. Stevenson, L. R. 2 H. L. Sc. 470, per Ld. Cairns; Burke v. S. E. Ry. Co., 5 C. P. D. 1, per Ld. Coleridge.